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FILED

DISTRICT COURT OF GUAM

MAR 14 2007 *nbe*

MARY L.M. MORAN
CLERK OF COURT

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE TERRITORY OF GUAM

10 AMERICOPTERS, LLC,
11 Plaintiff,

12 vs.

13 FEDERAL AVIATION
14 ADMINISTRATION,

15 Defendant.

CIVIL CASE NO. 03-00005

16 **OPPOSITION TO ENTRY
17 OF DEFAULT**

18 Plaintiff's second request for entry of default is entirely inappropriate and should be
19 denied.

20 The United States has answered the new Amended Complaint.

21 Plaintiff's grievance seems to be primarily with the quality of discovery in the initial
22 disclosures of the United States. The United States is relying on the same documents it used to
23 support its appeal in this case. The Plaintiff has never contacted this office to convey any
24 specific complaint about those documents nor to ask for any specifics or extra information about
25 the documents. It is axiomatic that issues of discovery should be resolved by the parties. If a
26 resolution cannot be reached by the parties, either or both of the parties can then turn to the
27 Court for resolutions.

28 The United States remains committed to doing its best to satisfy any reasonable request

1 for discovery of documents by the Plaintiff.

2
3 Plaintiff is aware that the agency in this case believes that the jurisdiction for this claim
4 for a Taking is with the U.S. Court of Claims. The United States has filed it Amended Motion to
5 Dismiss for Failure to State a Claim or, in the Alternative, to Transfer with the Court and will
6 request a hearing on the Motion. (The United States filed a similar motion on November 29,
7 2006 but did not request a date for hearing. The Plaintiff was subsequently allowed to file an
8 Amended Complaint to replace the Complaint that was originally dismissed by this Court.)
9


10 This Assistant U.S. Attorney is currently traveling to conduct discovery in other cases but
11 can confer with Plaintiff immediately, at his request, to work on any discovery grievances or
12 other issues that might be resolvable by the parties.
13

14 Plaintiff's awareness of the merit of the United States' request for dismissal or transfer, his
15 frustration over having previously had his original Complaint dismissed by this Court, or his
16 disappointment at the Ninth Circuit's affirmation of that Complaint's dismissal (and its remand
17 for the limited claim of a taking), should not be an excuse for Plaintiff's failure to communicate
18 over discovery requests or for multiple requests to the Court for entries of default.
19

20 The United States is not in default and a request for entry should be denied.
21

22 Respectfully submitted this 14th day of March 2007.
23

24 LEONARDO M. RAPADAS
25 United States Attorney
26 District of Guam and CNMI

27 By: 
28 MIKEL W. SCHWAB
Assistant U.S. Attorney